IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 16.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.763 of 2006

Siva ... Petitioner

Vs.

1.State rep. by the
Secretary to Government,
Prohibition and Excise Department,
Fort St.George,, Chennai-9.

2.The District Magistrate and
District Collector,
Kancheepuram District @
Kancheepuram. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records of the second respondent, pertaining to the order made in BDFGISSV No.31 of 2006 dated 29.07.2006 in detaining the detenu under Tamil Nadu Act 14 of 1982, as Boot-legger and quash the same and direct the respondents to produce the detenu, namely, Siva, S/o Chengappa Naidu, aged 44 years, who is detained at the Central Prison, Vellore, before this Court and set him at liberty.

For Petitioner : Mr.O.S.Thilak Pasumbadiar
For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, by name Siva, who is detained as a ''Bootlegger" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 29.07.2006, challenges the same in this Petition.

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2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, the learned counsel for the petitioner by drawing our attention to the averments made in paragraph No.5(i) of the grounds of detention submitted that, the detention order is liable to be quashed on the ground of non-application of mind on the part of the detaining authority.

4. Elaborating the above submission, the learned counsel for the petitioner has pointed out that the detenu himself has moved a bail application in respect of Cr.No.328 of 2006 on the file of the Baluchetty Chatram Police Station in Crl.M.P.No.8660 of 2006 before the Principal District and Sessions Court, Chengalpattu on 24.07.2006 and according to the detaining authority, the said petition is pending on the date of passing of the detention order and it is posted to 01.08.2006. While so, while considering the imminent possibility of the detenu being coming out on the orders of the Court has expressed that ".....I am also aware that it is very likely that he may come out on bail by filing a bail application before the same Court or Higher Court since in similar cases bails are granted by the concerned Court or Higher Court after lapse of time.....". As rightly pointed out by the learned counsel for the petitioner, when the bail application of the detenu was very well pending before the Principal District and Sessions Court, Chengalpattu and the said fact was very well noted by the detaining authority, it is not clear how he arrived at a conclusion that the detenu will come out on bail by filing a bail application before the same Court or higher Court which amply shows his non-application of mind in considering the case of the detenu, and detaining him as a Bootlegger under the Tamil Nadu Act 14 of 1982. We accept the said contention of the learned counsel for the petitioner. Under these circumstances, the detention order is liable to be quashed.

5. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with some other case or cause.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

gms

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To

1.The Secretary to Government,
Prohibition and Excise Department, Fort St.George,, Chennai-9.

2.The District Magistrate and District Collector,
Kancheepuram District @ Kancheepuram.

3. The Superintendent, Central Prison, Vellore
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

HCP. No.763 of 2006

TEJ(CO)
RVL 25.10.2006

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